



Meso & another (Suing as legal representatives of the Estate of Boaz Wafula Meso, 1st Deceased & Monica Riziki Meso, 2nd Deceased) v City Hopper Limited (Civil Case 412 of 2010) [2024] KEHC 14178 (KLR) (Civ) (8 November 2024) (Judgment)

Neutral citation: [2024] KEHC 14178 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE 412 OF 2010
AN ONGERI, J
NOVEMBER 8, 2024

BETWEEN

PHILIP ODHIAMBO MESO 1ST PLAINTIFF

FRIDAH MESO 2ND PLAINTIFF

**SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF BOAZ WAFULA
MESO, 1ST DECEASED & MONICA RIZIKI MESO, 2ND DECEASED**

AND

CITY HOPPER LIMITED DEFENDANT

JUDGMENT

1. The two plaintiffs in this case, Philip Odhiambo Meso And Fridah Mudibo Meso filed this suit seeking damages under both the *Law Reform Act* and the *Fatal Accidents Act* against City Hopper Ltd on behalf of the estates of the two deceased persons Boaz Wafula Meso And Monica Akinyi Meso (both deceased).
2. The two deceased persons died on 28/8/2007 along Kisumu-Busia Road while travelling in motor vehicle registration no. KAS 394B when the agent and/or driver of the defendant drove the said motor vehicle negligently and caused it to collide with motor vehicle registration no. 586 UAB 829F as a result the two deceased persons suffered fatal injuries.
3. The two persons who were husband and wife left the following beneficiaries
 - a. L. P. M. son 8 years
 - b. I. P. M. son 8 years



- c. E. F. M. daughter 4 years
4. At the time of the accident, Boaz Meso (deceased) was aged 34 years while Monica Akinyi Baraza was aged 28 years and was studying accounts at Meteorological College while Boaz was employed at Standard Chartered Bank as a manager earning kshs.200,000 per month.
5. The plaintiffs are seeking the following remedies against the defendant;
 - i. Special damages kssh.146,200/=.
 - ii. Damages under the *Law Reform Act* Cap 32 Laws of Kenya.
 - iii. Damages under the *Fatal Accidents Act* Cap 26.
 - iv. Costs of the suit.
 - v. Interest on (i) and (ii) above at court rates.
 - vi. Such further or other relief as this court may deem fit to grant.
6. The hearing of this case proceeded on 29/4/2024. The plaintiffs' evidence in summary was that the two deceased persons were travelling from Nairobi to Busigada village to attend the burial of Wycliffe Adoka on the night of 28/8/2007.
7. The bus the two deceased persons were travelling in was involved in a road traffic accident with motor vehicle registration no. 586 UAB 829F and the two deceased persons were fatally injured.
8. The 2nd plaintiff testified as PW 1. She said the 1st plaintiff is now deceased.
9. PW 1 said that Boaz Meso (deceased) was working at the bank. He had gotten a job at KRA but he had not reported when he met his death.
10. PW 2, Brenda Nabuya Meso who was the sister to Boaz Meso (deceased) said she was travelling in the same bus with the two deceased persons on 28/8/2007.
11. PW 2 said she was seated behind the driver when the accident occurred. She was not injured but her son who was five months old was injured.
12. PW 2 said she did not know how the accident occurred. She said she saw the right side of the bus had been ripped off and the bus was in the middle of the road when she got out.
13. The defendant was not able to procure his witness and was compelled to close the prosecution case due to the age of the case.
14. The parties filed written submissions as follows;
15. On liability the plaintiff submitted that the defendant is solely liable for the fatal accident for driving the subject motor vehicle so negligently that he caused it to collide with the subject trailer.
16. PW2, an eye witness testified that after she was pulled out of the wreckage, she observed that the subject motor vehicle had left its lawful lane and had encroached onto the opposite lane.
17. PW1 produced two police abstracts dated 28/11/2008 both in relation to the 1st and 2nd deceased. The abstracts both termed the injuries in both as fatal. This was supported by the death certificates on the 1st and 2nd deceased.



18. The defendant did not call any witnesses or tender any evidence to controvert the evidence of the plaintiff but instead tried to lay the blame on the driver of the trailer. These remained as mere allegations and is not available for consideration having not been proved by evidence.
19. In addition, the deceased persons were passengers who had no control of the subject motor vehicle and could not have contributed to the accident.
20. On damages the plaintiff submitted that Kshs. 100,000 of each deceased person would be sufficient under the head of pain and suffering. The plaintiff in support cited David Kahuruka Gitau & another v Nancy Ann Wathithi Gitau & another [2016] eKLR where the appellate court upheld an award of Kshs. 100,000 for pain and suffering for a deceased person who died barely 30 minutes after the accident.
21. On loss of expectation of life, the plaintiff submitted that the 1st deceased person dies at the age of 34 years.
22. The plaintiff proposed Kshs. 200,000 under this head as reasonable compensation in support the plaintiff cited Violet Jeptum Rahedi v Albert Kubai Mbogori [2013] eKLR where the court awarded Kshs. 150,000 for loss of expectation of life where the deceased person was aged 44 years.
23. The plaintiff submitted that the 2nd deceased person died at the age of 28 years and the plaintiff proposed Kshs 250,000 under this head and cited Daniel Kuria Nganga v Nairobi City Council [2013] eKLR where the court awarded Kshs. 300,00 for loss of expectation of life where the deceased was aged 14 years.
24. Under the *Fatal Accidents Act* the plaintiff submitted that the 1st deceased was working with Standard Chartered Bank and that according to his pay slip he earned a net salary of Kshs. 46,386 per month as at the time of the accident. The plaintiff proposed a multiplier of 26 years considering the statutory age of retirement of 60 years.
25. On dependency ratio the plaintiff proposed 2/3 as the 1st deceased was a husband and father of three children. Based on this the plaintiff computed damages for the 1st deceased under this head as follows: Kshs. 46,386 x 12 x 2/3 x 26 = Kshs. 9,648,288.
26. As regards the 2nd deceased the plaintiff submitted that she died at the age of 28 years. She was a wife and mother to three children. She was of good health and had a promising future. The plaintiff proposed an award of Kshs. 8,000,000 and in support cited Fredrick Mwangi Wamwea v Mutuma Munene Meja [2021] eKLR where the court awarded Kshs 8,000,000 for lost years to be sufficient where the deceased who was a 3rd year student died at the age of 21 years.
27. The plaintiff on special damages proposed Kshs. 146,200 and argued that the court should take judicial notice of the fact that when a person dies and burial takes place, expenses must be incurred even where no receipts are produced.
28. The defendant on the other hand submitted that on liability that PW2 claimed to be an eye witness but she was a passenger in the defendant's bus and on cross examination admitted that the oil tanker was way far off the road after the collision. The defendant argued that the witness is not an expert on accidents matters and the court should not accept her opinion that the defendant's bus had encroached on the lane of the oil tanker.
29. The plaintiff additionally did not call a police officer to testify as to the outcome of the investigations or even produce a sketch and therefore the plaintiff did not prove liability against the defendant and the case herein should be dismissed.



30. It is the duty of the plaintiffs to prove their case to the required standard which is on a balance of probabilities.
31. The issues for determination in this case are as follows;
- i. Whether the defendant was liable in negligence for the accident.
 - ii. What quantum of damages the defendant is liable to pay the plaintiffs?
 - iii. Who pays the costs of this case?
32. On the issue of liability, I find that the evidence by the plaintiffs was that the two deceased persons were travelling in motor vehicle registration no. KAS 394B belonging to the defendant when it was involved in an accident.
33. PW 2 was in the bus on the fateful night but she did not sustain injuries. Her five months old son was injured.
34. PW 2 said the bus left its lane at the time of the collision. I find that the driver of the bus was responsible for the accident.
35. The deceased persons were passengers in the bus and they did not contribute in any way to the occurrence of the accident.
36. I find that the evidence of PW 2 who was an eye witness was not controverted since the defendant did not call any witnesses.
37. The defendants' attempt to enjoin motor vehicle registration 586 UAB 829F as a 3rd party was thwarted when the court struck out the 3rd party proceedings.
38. I find that the defendant was 100% liable in negligence for the accident.
39. On assessment of damages, the plaintiff submitted that the 1st deceased was working with Standard Chartered Bank and that according to his pay slip he earned a net salary of Kshs. 46,386 per month as at the time of the accident. The plaintiff proposed a multiplier of 26 years considering the statutory age of retirement of 60 years.
40. On dependency ratio the plaintiff proposed 2/3 as the 1st deceased was a husband and father of three children. Based on this the plaintiff computed damages for the 1st deceased under this head as follows: Kshs. 46,386 x 12 x 2/3 x 26 = Kshs. 9,648,288. I award the same.
41. As regards the 2nd deceased the plaintiff submitted that she died at the age of 28 years. She was a wife and mother to three children. She was of good health and had a promising future. She was a student. The plaintiff proposed an award of Kshs. 8,000,000 as a global figure and I award the same.
42. I award damages as follows;
- Liability 100%
 - Boaz Meso (1st deceased)
 - Special damages ksh.146,200/=.
 - General damages for pain & suffering 10,000
 - Loss of expectation of life 100,000
 - Loss of dependency 46,386 x 12 x 26 x 2/3 = Kshs.9,648,288.



Total Kshs:9,904,488/=

43. Monica Akinyi Baraza (2nd Deceased)

General damages for pain & suffering 10,000

Loss of expectation of life 100,000

Loss of dependency (global figure) 8,000,000

Total Kshs: 8,110,000/=

44. Judgment be and is hereby entered in favour of the 2nd plaintiff against the defendants in the sum of Kshs:18,014,488/- plus costs and interest.

45. In respect of special damages interest from the time of filing suit until payment in full.

46. In respect of general damages interest from the date to this judgment until payment in full.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024.

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiffs

..... for the Defendant

